

Long Creek Watershed Management District Governing Board
Agenda – September 28, 2010 Meeting

1. **Call to order**
2. **Roll call**
3. **Minutes** (*Attachment A*)
4. **Treasurer's report**
5. **Executive Director's report**
6. **Mall Plaza Contract Assignments.** To accept the assignment of contract for Risbara for the Mall Plaza project from the Cumberland County Water and Soil Conservation District (*Attachment B*) and to authorize the Long Creek Watershed Management District Chair/President to execute documents necessary thereto.
7. **Colonel Westbrook Landscape Architect Contract Assignment.** To accept the assignment of contract for Terrence J. DeWan & Associates for the Colonel Westbrook Riparian Planting Design project from the Cumberland County Water and Soil Conservation District (*Attachment C*) and to authorize the Long Creek Watershed Management District Chair/President to execute documents necessary thereto.
8. **Contract Services.** To contract services (a – b) for the Long Creek Watershed Management District and to authorize the Long Creek Watershed Management District Chair/President to execute documents necessary thereto. Entities that responded to the RFP will be posted at www.restorelongcreek.org by September 22, 2010. Recommendations for hiring will be provided at the meeting.
 - a. **Sweeping Services**
 - b. **Catch Basin Cleaning Services**
9. **Appointment for the Finance Committee.** To appoint members to the Finance Committee that shall be chaired by the Treasurer and have a minimum of four members and maximum of six. Letters of interest were received from the following (*Attachment D*):
 - David Russell, Fairchild SemiconductorIt is recommended that Mr. Russell be appointed to the Finance Committee. It is also recommended that the LCWMD Board select an additional board member to be appointed to the Finance Committee if the four member minimum is desired. Committee terms will extend two years.
10. **Cost-Sharing Policy.** Under its authority to adopt Rules and Regulations under Section 5.D. of the Interlocal Agreement and Art. II, Sec. 2.D. of the Bylaws of Long Creek Watershed Management District, the LCWMD Board of Directors can adopt Rules and Regulations. The Cost-Sharing Policy (*Attachment E*) is provided for consideration and adoption by the LCWMD Board.
11. **Contracts Policy.** Under its authority to adopt Rules and Regulations under Section 5.D. of the Interlocal Agreement and Art. II, Sec. 2.D. of the Bylaws of Long Creek Watershed Management District, the LCWMD Board of Directors can adopt Rules and Regulations. The Contracts Policy (*Attachment F*) is provided for consideration and adoption by the LCWMD Board.
12. **Conflict of Interest Policy.** Under its authority to adopt Rules and Regulations under Section 5.D. of the Interlocal Agreement and Art. II, Sec. 2.D. of the Bylaws of Long Creek Watershed Management District, the LCWMD Board of Directors can adopt Rules and Regulations. The Contracts Policy (*Attachment G*) is provided for consideration and adoption by the LCWMD Board.

13. **Amendment to Financial Control Structure.** Amendment to the “Controls over Purchase Orders” component of the LCWMD Financial Control Structure is provided to the board for consideration and adoption (*Attachment H*).
14. **Commercial General Liability Insurance.** To consider purchase of Commercial General Liability insurance for the District (*Attachment I*).
15. **Public Comments.**
16. **Adjourn.**

Attachment A - Minutes 8-3-10 LCWMD Gov Bd Mtg

Long Creek Watershed Management District Governing Board

Minutes – August 3, 2010 Meeting

1. **Call to order – 9:00 am**

2. **Roll call**

- **Dan Bacon (absent)**, Curtis Bohlen (arrived late), Mary Costigan, Brian Goldberg, **Craig Gorris (absent)**, Jim Hughes, Gerard Jalbert, John O'Hara, Ed Palmer, Tom Raymond, David Russell, David Thomes

3. **Minutes (Attachment A)**

- Ms. Costigan made the motion to accept the minutes as presented. Mr. O'Hara seconded the motion. The motion was approved unanimously.

4. **Treasurer's report**

- \$324,000 in the bank; \$65,000 Accounts receivable; \$140,000 due from CCSWCD; bottom line – solidly in the black
- Fiscal year began July 1, 2010; Banking accounts are open; LCWMD accounting has begun; Audit of CCSWCD is in progress; Integration of funds from CCSWCD will occur once audit is complete.
- Once the audit is complete and the integration of funds from CCSWCD has occurred, then the Long Creek finance activities will only be on LCWMD books and it will be much simpler to present the financial reports. Reports will be posted on the restore long creek website (currently all info is provided on the website as part of the board packets).

5. **Executive Director's report**

- PLA update
 - As of August 2, 2010 the designated impervious area totaled 548.22 acres.
 - 92.63% of the designated acreage has PLAs executed (98) or in progress (10).
 - Four properties (14 acres) have conveyed that they are seeking individual permits.
 - Three properties (3.25 acres) are working to get their properties to under one acre.
 - Met with DOT who is seeking in lieu of payment credit for work on Maine Mall Road.

6. **Maine Charitable Solicitation Act.** To authorize the President/Chair to file all documents necessary to conform to the requirements of the Maine Charitable Solicitations Act and to execute and deliver such documents and instruments as may be necessary to comply with such Act.

- Mr. Thomes moved item as presented. Mr. Palmer seconded the motion. The motion was approved unanimously.

7. **Good Housekeeping & Pollution Prevention.** To direct the Executive Director to issue Request for Proposals for BMP maintenance services and vacuum sweeping and catch basin cleaning.

- Recommended that the RFPs be for three year contracts
- Mr. Hughes moved item as presented. Mr. O'Hara seconded the motion. The motion was approved unanimously.

8. **Cost Sharing with change in development.** Property owners/operators whose change in property development creates additional expenses to LCWMD for changes in watershed treatment and administrative costs may be required to share in the increase of expenses to the extent that changes are needed to meet the additional watershed treatment above the current PLA plan.

- Determined that Jim should draft a policy to be brought back to the board.
- Jerry to call Mastoran.

9. **Contractor Insurance Policy.** To discuss the intent of the PLA insurance requirements for contractors and to determine whether to differentiate between contractors based on work provided.

- PLA specifies \$2 million combined single limit. Everyone agreed that this makes a lot of sense when the contractor has a crane on your property, but the \$1 million for standard for professional is acceptable.
 - Recommended to leave this to the discretion of the Executive Director.
10. **Late Policy.** To provide the Executive Director direction on acceptance of designated landowners who choose to enter into the General Permit after the timeframe that is allowed for in the PLA. Under its authority to adopt Rules and Regulations under Section 5.D. of the Interlocal Agreement and Art. II, Sec. 2.D. of the Bylaws of Long Creek Watershed Management District, the LCWMD Board of Directors can adopt Rules and Regulations. The *Attachment B* Draft Rules and Regulations are provided for adoption by the LCWMD Board.
- Copy the language from B.2.a. to B.1.a and remove language, “and also shall pay 0.25% interest per month amount of such Initial Assessment and/or Annual Assessment(s) calculated from the due date of each such Assessment.”
 - Remove B.2.a. language, “and also shall pay 0.25% interest per month amount of such Initial Assessment and/or Annual Assessment(s) calculated from the due date of each such Assessment.”
 - Mr. Hughes moved to adopt the policy as amended. Mr. Russell seconded the motion. The motion was approved unanimously.
11. **Conflict of Interest Policy.** To adopt the attached (*Attachment C*) Conflict of Interest Policy as the Conflict of Interest Policy of the LCWMD; the attached is a standard policy for nonprofit corporations approved by the Internal Revenue Service that has been modified to reflect that the District also is a quasi-municipal corporation whose directors also are governed by Maine’s conflict of interest statute, 30-A M.R.S.A. § 2605.
- Mr. Raymond moved to adopt the policy as presented. Mr. Hughes seconded the motion. The motion was approved unanimously.
12. **Board Insurance.** To review and approve Executive Director’s purchase of insurance for the District (commercial general liability coverage) and for the Board of Directors (directors and officers liability or public officials liability coverage) (*Attachment D*).
- Mr. O’Hara moved that the Executive Director purchase the Public Officials Insurance (\$2,019.00) and the General Liability (\$500.00) from Cross Agency. Mr. Russell seconded the motion. The motion was approved unanimously.
13. **Procurement Policy.** To adopt the attached (*Attachment E*) Procurement Policy as the Procurement Policy of the LCWMD.
- Add “e. LCWMD reserves the right to reject any and all bids/proposals and to reject non-responsive bids/proposals.” under C.3. and C.4.
 - Mr. Goldberg moved to adopt the policy as amended. Mr. Russell seconded the motion. The motion was approved unanimously.
14. **501(c) 3 Application.** To approve the application for nonprofit corporation status under Section 501(c) 3 of the Internal Revenue Code and to authorize the President/Chair to sign and submit that application (*Attachment F* (included in this packet is the 1023 form and supporting information, the application in its entirety includes supporting documents (Interlocal Agreement, PLA, etc.) and can be downloaded at www.restorelongcreek.org)).
- a. Mr. O’Hara moved item as presented. Mr. Palmer seconded the motion. The motion was approved unanimously.
15. **Public Comments – none.**
16. **Meeting adjourned at 10:50 a.m.**

Attachment B - Mall Paza Contract Assignment

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

REFERENCE IS HEREBY MADE to that certain "Standard Form of Agreement Between Owner and Contractor on the Basis of a Stipulated Price" dated February 5, 2010, (the "Agreement") by and between Risbara Bros. Construction Co., Inc. (the "Contractor") and Cumberland County Soil & Water Conservation District (the "Assignor").

WHEREAS, the Assignor wishes to assign all of its rights and obligations under the Agreement to Long Creek Watershed Management District (the "Assignee");

WHEREAS, the Assignee wishes to accept all of the rights and assume all of the obligations of the Assignor thereunder, and

WHEREAS, the Contractor wishes to consent to the assignment hereunder.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises contained herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties do hereby agree as follows:

1. The Assignor hereby assigns to the Assignee all of the Assignor's rights and interests in and to the Agreement.
2. The Assignee hereby irrevocably assumes all rights and interests in and to the Agreement, and releases and discharges the Assignor from any and all duties and responsibilities under the Agreement.
3. The Assignee shall comply with all of the provisions of the Agreement, and the Contractor may enforce the Agreement provisions directly against the Assignee.
4. The Contractor hereby consents to this assignment to the Assignee of all of the Assignor's rights and interests in and to the Agreement as provided hereunder.
5. The Assignee hereby agrees that it may not further assign the Agreement without the Contractor's prior written consent.

Executed this ____ day of _____, 2010.

ASSIGNOR:

Cumberland County Soil & Water Conservation District

Witness

By: _____
Thomas U. Gordon
Its Chairman

ASSIGNEE:

Long Creek Watershed Management District

Witness

By: _____
Gerard Jalbert
Its Chair/President

**ACCEPTED, ACKNOWLEDGED
AND CONSENTED TO BY:**

CONTRACTOR:

Risbara Bros. Construction Co., Inc.,

Witness

By: _____

STATE OF MAINE
Cumberland, ss.

_____, 2010

Personally appeared before me the above-named Thomas U. Gordon, Chairman of the Assignor, personally known to me to be the person who executed the above instrument, and he acknowledged the same to be his free act and deed in said capacity, and the free act and deed of Assignor.

Notary Public
My commission expires:

STATE OF MAINE
Cumberland, ss.

_____, 2010

Personally appeared before me the above-named Gerard Jalbert, Chair/President of the Assignee, personally known to me to be the person who executed the above instrument, and he acknowledged the same to be his free act and deed in said capacity, and the free act and deed of Assignee.

Notary Public
My commission expires:

STATE OF MAINE

_____, ss.

_____, 2010

Personally appeared before me the above-named _____,
_____ of the Contractor, personally known to me to be the person who
executed the above instrument, and he acknowledged the same to be his free act and deed in said
capacity, and the free act and deed of Contractor.

Notary Public
My commission expires:

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

REFERENCE IS HEREBY MADE to that certain "Agreement Between Owner and Landscape Architect for Professional Services" dated September 15, 2009, (the "Agreement") by and between Terrence J. DeWan & Associates. (the "Contractor") and Cumberland County Soil & Water Conservation District (the "Assignor").

WHEREAS, the Assignor wishes to assign all of its rights and obligations under the Agreement to Long Creek Watershed Management District (the "Assignee");

WHEREAS, the Assignee wishes to accept all of the rights and assume all of the obligations of the Assignor thereunder, and

WHEREAS, the Contractor wishes to consent to the assignment hereunder.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises contained herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties do hereby agree as follows:

1. The Assignor hereby assigns to the Assignee all of the Assignor's rights and interests in and to the Agreement.
2. The Assignee hereby irrevocably assumes all rights and interests in and to the Agreement, and the Assignor is hereby released and discharged from any and all duties and responsibilities under the Agreement.
3. The Assignee shall comply with all of the provisions of the Agreement, and the Contractor may enforce the Agreement provisions directly against the Assignee.
4. The Contractor hereby consents to this assignment to the Assignee of all of the Assignor's rights and interests in and to the Agreement as provided hereunder.
5. The Assignee hereby agrees that it may not further assign the Agreement without the Contractor's prior written consent.

Executed this ____ day of _____, 2010.

ASSIGNOR:

Cumberland County Soil & Water Conservation District

By: _____

Thomas U. Gordon
Its Chairman

Witness

ASSIGNEE:

Long Creek Watershed Management District

Witness

By: _____
Gerard Jalbert
Its Chair/President

**ACCEPTED, ACKNOWLEDGED
AND CONSENTED TO BY:**

CONTRACTOR:

Terrence J. DeWan & Associates

Witness

By: _____

STATE OF MAINE
Cumberland, ss.

_____, 2010

Personally appeared before me the above-named Thomas U. Gordon, Chairman of the Assignor, personally known to me to be the person who executed the above instrument, and he acknowledged the same to be his free act and deed in said capacity, and the free act and deed of Assignor.

Notary Public
My commission expires:

STATE OF MAINE
Cumberland, ss.

_____, 2010

Personally appeared before me the above-named Gerard Jalbert, Chair/President of the Assignee, personally known to me to be the person who executed the above instrument, and he acknowledged the same to be his free act and deed in said capacity, and the free act and deed of Assignee.

Notary Public
My commission expires:

STATE OF MAINE

_____, ss.

_____, 2010

Personally appeared before me the above-named Terence J. DeWan,
_____ of the Contractor, personally known to me to be the person who
executed the above instrument, and he acknowledged the same to be his free act and deed in said
capacity, and the free act and deed of Contractor.

Notary Public

My commission expires:

Attachment D - Finance Committee Appointment



207-775-8100 Tel

Fairchild Semiconductor
333 Western Avenue
South Portland, Maine 04106

September 1, 2010

Re: Finance Committee for the Long Creek Watershed Management District

Dear Members of the Board:

Please accept my request for a position on the Finance Committee. I have been involved in the Long Creek Watershed Restoration Planning Process from its inception in 2007. I've been an active member on the Steering Committee, Models & Outreach Committee, and now a member of the Governing Board.

I've been at Fairchild Semiconductor in South Portland for 30 years. Over those years I've directly managed and overseen others managing multimillion dollar capital projects involving site development, building construction, and equipment installation. I've developed, applied for, and managed the budgets for many of these projects. I've had to work closely with our Finance department to make sure all project spending has been properly tracked and accounted for.

Thank you for this opportunity to present my request.

Sincerely,

David Russell

David Russell
Staff Facilities Engineer
Fairchild Semiconductor

Cc: John Gervais, Mike Vail, Joel Rouillard

DRAFT

Under its authority to adopt Rules and Regulations under Section 5.D. of the Interlocal Agreement and Art. II, Sec. 2.D. of the Bylaws of Long Creek Watershed Management District, the LCWMD Board of Directors hereby amend the LCWMD Rules and Regulations to add “D. Cost-Sharing Policy,” to read as follows:

Long Creek Watershed Management District Rules and Regulations

D. Cost-Sharing Policy. Where property development or redevelopment by Participating Landowners and/or by Record Owners of a Parcel or Parcels that are subject to a PLA between LCWMD and that Participating Landowner and/or Record Owner is not part of a Relocation, Removal or Termination under the PLA and/or does not require a Plan Modification under the PLA, but will result in increased costs to LCWMD, including but not limited to additional costs of governmental review, engineering and administration, the LCWMD Board shall ask the Participating Landowner and/or the Record Owner to contribute to the payment of those increased costs and shall work with the reviewing governmental units to minimize any such increased costs.

Attachment F - Contract Payments

Under its authority to adopt Rules and Regulations under Section 5.D. of the Interlocal Agreement and Art. II, Sec. 2.D. of the Bylaws of Long Creek Watershed Management District, the LCWMD Board of Directors hereby amend the LCWMD Rules and Regulations by adding “**_. Long Creek Watershed Management District Contracts Policy,**” to read as follows:

Long Creek Watershed Management District Rules and Regulations

_. Long Creek Watershed Management District Contracts Policy

1. In order to avoid the placement of mechanics' liens on the property of Participating Landowners for labor, services and/or materials provided for work performed on behalf of LCWMD, contracts entered into by LCWMD for the construction, reconstruction, installation, operation, modification, alteration, maintenance, repair, and replacement of public and private stormwater management structures, facilities and improvements, including structural and non-structural Best Management Practices, on Parcels of Participating Landowners and/or Record Owners subject to a Participating Landowner Agreement between that Participating Landowner and/or Record Owner and LCWMD, shall require contractors to present LCWMD with signed lien waivers and releases from all of their subcontractors and materialmen and a notarized affidavit from the contractor reciting that so far as it has knowledge or information the lien waivers and releases include all labor and materials for which a lien might be filed, or bonds satisfactory to LCWMD and in favor of LCWMD and the Participating Landowner and/or Record Owner in appropriate amounts to indemnify them against any such lien, prior to LCWMD making payment to the contractor.

Attachment G - Conflict of Interest Policy 08-13-2010

Under its authority to adopt Rules and Regulations under Section 5.D. of the Interlocal Agreement and Art. II, Sec. 2.D. of the Bylaws of Long Creek Watershed Management District, the LCWMD Board of Directors hereby amend the LCWMD Rules and Regulations by adding “**_. Long Creek Watershed Management District Conflict of Interest Policy,**” to read as follows:

LONG CREEK WATERSHED MANAGEMENT DISTRICT

CONFLICT OF INTEREST POLICY

I. Purpose

It is the purpose of this Conflict of Interest Policy (the “Policy”) to promote full disclosure to the Corporation of all Conflicts of Interest and other matters which may affect the decisions and actions of its Board of Directors (the “Board”).

II. Conflict of Interest Transactions

A. General Statement of Policy

The Corporation shall not participate in a transaction in which a director or officer has a Conflict of Interest, unless such a transaction is approved in accordance with this Policy.

B. Definitions

- 1. Conflict of Interest:** A Conflict of Interest is a direct or indirect financial interest or a personal interest of an officer or director in any transaction in which the Corporation is participating and also is as stated in 30-A M.R.S.A. § 2605.
- 2. Financial Interest:** A director or officer has a financial interest if that individual, directly or indirectly, or through business or family has:
 - a. an ownership or investment interest in any entity with which the Corporation is participating in a transaction;
 - b. a compensation agreement with any entity or individual with which the Corporation is participating in a transaction;
 - c. a potential ownership or investment interest or compensation agreement with any entity or individual with which the Corporation is negotiating a transaction; or
 - d. any other material financial interest in the transaction or potential transaction.

3. **Personal Interest:** A personal interest exists in situations where there is a divergence between an officer or director's personal interests and his or her fiduciary or professional obligations to the Corporation. A director or officer has a personal interest when an independent observer would reasonably question whether the director or officer's corporate actions or decisions are determined primarily by consideration of personal gain, financial or otherwise, adverse to the interests of the Corporation.

C. Disclosure of Conflict of Interest

It is the responsibility of each director and officer to disclose on a timely basis any matters which may give rise to a Conflict of Interest, or which may otherwise prevent the director or officer from performing his or her duties in accordance with applicable law and this Policy.

D. Procedure for Approval of a Conflict of Interest Transaction

All Conflict of Interest transactions must be approved in accordance with this Policy.

1. **Timing:** Approval may be given before or after the Conflict of Interest transaction has occurred.
2. **Standard:** A Conflict of Interest transaction may be authorized, approved or ratified by the Board or a committee of the Board if:
 - a. the material facts of the transaction and the director's or officer's financial or personal interest are known;
 - b. it is fair and equitable to the Corporation as of the date the transaction is authorized, approved or ratified; and
 - c. if 30-A M.R.S.A. § 2605 is applicable to a Conflict of Interest, its requirements are followed.
3. **Participants in Approval:** Approval of a Conflict of Interest transaction must be by affirmative vote of a two-thirds majority of the members of the Board or a committee of the Board who have no interest, financial or otherwise, in the transaction. A single director cannot approve a Conflict of Interest transaction.
4. **Compensation:** This Policy does not affect the ability of the Board to award reasonable compensation to directors or officers for their services as directors or officers, or in any employment capacity.

III. Composition of the Board of Directors

No more than 49% of the individuals on the Board may be financially interested. For the purpose of this Article III only, a financially interested person is one who individually or whose immediate family received or is entitled to receive compensation for personal services rendered to the Corporation within the previous 12 months, whether as employee, independent contractor or otherwise. A financially interested Board member shall disclose the existence of his or her financial interest to the Board, as soon as such interest becomes known to such member.

IV. Periodic Reviews

From time to time, the officers of the Corporation shall take reasonable steps to assure that every director and officer has read, understood, and agreed to comply with this Policy, which may include the requirement that all directors and officers sign a written statement acknowledging the above and agreeing to be bound by this Policy.

Attachment H - Amendment to Internal Financial Controls

The following is provided with tracked changes to show the proposed amendments to the May 21, 2010 approved Internal Financial Control Structure for M. Controls Over Purchase Orders.

INTERNAL FINANCIAL CONTROL STRUCTURE – Approved MAY 21, 2010

M. CONTROLS OVER PURCHASING

Purchases (non-contract expenses such as office supplies) under \$200 can be initiated by the Fiscal Agent or Executive Director and invoices are submitted to the Executive Director for approval prior to payment.

Deleted: E

Deleted: ORDERS

Purchase orders are required for any non-contract expenses over \$200.

Purchase orders for non-contract expenses from \$200 to \$500 will be initiated by the Fiscal Agent, printed, and submitted to the Executive Director for approval.

Deleted: (such as office supplies)

Deleted: Executive Director or

Deleted: Treasurer

Purchase orders for non-contract expenses greater than \$500 will be initiated by the Fiscal Agent or Executive Director, printed, and submitted to the Treasurer for approval.

Upon receipt of the invoice by the business office, verification that the goods were received by the Executive Director will be submitted to the Fiscal Agent and recorded. The Fiscal Agent will then enter and schedule invoices for payment into the District's software utilizing all available discounts to the District.

The Fiscal Agent will pay these invoices as scheduled.

All outstanding purchase orders will be reviewed monthly by the Fiscal Agent. If a purchase order is outstanding for more than 30 days, a follow up call will be made by the Fiscal Agent to the Executive Director. This call will be noted on the face of the purchase order with any applicable notes.

Attachment I - General Liability Insurance

General Liability							
	2010/2011 cost	General Aggregate	Products & Completed operations Aggregate	Personal & Advertising Injury	Each Occurrence	Fire Damage (any One Fire)	Medical Expense (any one expense)
Holden - Commercial & General Liability	\$1,423.00	\$500,000	\$500,000	\$500,000	\$500,000	\$100,000	\$5,000
Holden - Commercial & General Liability	\$1,672.00	\$2,000,000	\$2,000,000	\$1,000,000	\$1,000,000	\$100,000	\$5,000
Cross Agency - Peerless Insurance	\$ 500.00	\$2,000,000			\$1,000,000		
<p>At the 8-3-10 Board meeting the Executive Director was approved to purchase General Liability Insurance for the LCWMD from the Cross Agency at the rate provided of \$500.00. When this was followed up on, Cross determined that the \$500 quote was wrong for the nature of our business. If we purchased the insurance at that level it would be uncovered as part of an annual audit that the LCWMD enters into contracts and the additional coverage for subcontractors (should their insurance lapse for any reason) was necessary and LCWMD would be billed the difference.</p>							